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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	CC Docket No. 99-249
Low-Volume Long-Distance Usage	)	
	)	
	)	

COMMENTS OF EXCEL COMMUNICATIONS, INC.

Excel Communications, Inc., on behalf of its operating subsidiaries (collectively, "Excel"), by its attorneys, hereby respectfully submits the following comments in response to the Commission's *Notice of Inquiry* in the above-captioned proceeding.[1] Excel is the fourth largest long distance carrier in the United States in terms of presubscribed lines, and is one of the fastest growing providers of telecommunications services in North America. Through resale, and increasingly through the use of its own facilities, Excel serves primarily residential and small business customers widely dispersed throughout the country. As such, Excel has a direct interest in this proceeding.

In this proceeding, the Commission requests comment on the impact of minimum usage fees and certain other flat-rated charges on residential and single-line business customers who make few, or no, interstate long distance calls. These types of charges reflect the fact that carriers incur certain costs in serving any customer, regardless of usage. These costs include, but

1 *In the Matter of Low-Volume Long-Distance Users, Notice of Inquiry*, CC Docket No. 99-249 (Rel. July 8, 1999) ("*NOI*").

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are not limited to, administrative expenses arising from the provisioning and billing of telecommunications services, providing customer assistance 24 hours a day, seven days a week, as well as fulfilling universal service and access charge reform obligations.

From the outset, Excel applauds the Commission's efforts to ensure that all consumers benefit from the Commission's pro-competitive reforms and the resultant proliferation of competition in the long distance market, regardless of usage. Excel agrees with the Commission that under no circumstances should low-volume users, particularly those with low-incomes, be inequitably burdened with flat-rated charges or minimum usage fees imposed by interexchange carriers ("IXCs"). While Excel strongly supports the Commission's goals, Excel does not believe that new protections are required in the current market to protect low-volume users from inequitable charges. As discussed in these comments, the long distance industry is fully competitive and, as a result, responsive to market forces. Many carriers now offer calling plans with rates of 10 cents per-minute and less, which are very competitive. Further, as an additional option, customers who wish to avoid minimum usage fees and flat-rated charges altogether may utilize the services of 1010XXX dial-around carriers rather than presubscribe to an IXC. Accordingly, in such a competitive market, the Commission should rely upon market forces rather than pricing regulation to ensure that all subscribers pay reasonable prices for telecommunications services.

I. THERE IS NO BASIS TO CONCLUDE THAT LOW-VOLUME USERS ARE NOT PAYING MARKET PRICES FOR TELECOMMUNICATIONS SERVICES

Excel respectfully submits that the Commission's concern over the imposition of certain flat-rated charges on low-volume customers, while well-meaning, is unfounded. As the Commission is well aware, carriers incur certain administrative costs to provision and bill telecommunications services including, but not limited to, costs arising from fulfilling universal service and access charge reform requirements. These costs are incurred by carriers for all presubscribed customers, including those that make no long distance calls. Because IXCs incur primary interexchange carrier charge ("PICC") and universal service-related costs as part of their common carrier obligations, in addition to other general costs to carry all customers, it is only fair that they be able to recover these amounts from their presubscribed customers.

The fact that carriers recover these costs through flat-rated charges rather than per-minute rates is not indicative of unfair pricing. Many carriers utilize flat-rated pricing because it is the most efficient and economical way to recover the costs of serving customers. Indeed, if the Commission prohibited use of flat-rated fees, customers that make few, or no, long distance calls would avoid paying administrative and regulatory charges altogether despite the fact that IXCs remain subject to those costs in serving as their presubscribed carrier. The likely result of such inefficiency would be that all other customers (*i.e.*, the medium- and high-volume users) would be required to subsidize the costs for low-volume customers in the form of higher per-minute rates for services. Such a result clearly violates the Commission's long-standing policy of recovering costs from the cost-causative party.

Moreover, the long distance market is fully competitive and, therefore, does not require Commission regulation to ensure that consumers receive market prices for telecommunications services. As the Commission is well aware, there are currently hundreds of carriers tariffed at the federal level to provide a variety of long distance services. In an effort to remain competitive, these carriers continually promote various discount calling plans designed to meet the needs of customers with different calling patterns. Significantly, customers have the flexibility to, and do, change service providers with only a few days' delay and at nominal or no switching charge. The demand elasticity among residential and business customers has contributed to the highly competitive environment for long distance carriers. As the Commission has recognized in the past, in a fully competitive environment, carriers must charge market prices for services or risk losing their customers to other competitors.[2] Accordingly, Excel believes that the intense level of competition in the long distance market, among other things, is *prima facie* evidence that all subscribers, including low- volume users, are receiving market-based prices for their long distance services.

II. THE LONG DISTANCE MARKET IS FULLY COMPETITIVE AND, THEREFORE, DOES NOT WARRANT COMMISSION INTERFERENCE

Because the market is fully competitive, the Commission should avoid unnecessary interference in marketplace decisionmaking. How carriers recover costs arising from the provisioning and billing of telecommunications services, whether as a flat rate or a per-minute charge, is a business decision that should be not be made by the Commission. Rather, the Commission's primary goal should be to ensure that market conditions are competitive, not to regulate how carriers recover their costs in a competitive environment. In fact, further regulation would simply add to the costs of compliance that carriers would be forced to pass on to their customers -- resulting in the opposite of what the Commission's stated goal is in this proceeding.

To the extent that the Commission is concerned for low-volume, low-income users, Excel believes that market forces are the best protection against excessively burdensome flat-rated fees. As a preliminary matter, Excel believes that the Commission cannot assume that low-volume users are also low-income users, or similarly, that high-volume users are necessarily

2 See *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace, Second Report and Order*, 11 FCC Rcd 20730, 20742 (1996) (recognizing that the "high churn rate among consumers of interstate, domestic, interexchange services indicates that consumers find the services provided by interexchange carrier to be close substitutes, and that consumers are likely to switch carriers in order to obtain lower prices or more favorable terms and conditions."); *see also Motion of AT&T to be Reclassified as a Non-Dominant Carriers, Order*, 11 FCC Rcd 3271, 3305-3307 (1996).

high-income. There is nothing in the record that supports such a conclusion. A low-volume user could be a high-income individual who, as a matter of choice or circumstance, makes few interstate long distance calls or who uses a non-presubscribed carrier to make them. In any event, Excel submits that the best way to secure the lowest rates for low-income users is through market forces. Indeed, as a result of competitive forces, long distance rates are at an all-time low. Based on revenue figures reported by the Commission's Industry Analysis Division, average per-minute long distance rates decreased from 15 cents to 10 cents between 1992 and 1997.[3] Moreover, many carriers currently offer calling plans with rates even lower than 10 cents per-minute. These plans are available to all customers and have no usage requirements or limitations. Clearly, with such low rates available to consumers, there is no need for Commission intervention.

Significantly, Excel recently announced a promotional plan with an interstate rate of 3 cents per-minute from 7 p.m. to 7 a.m. and 10 cents per-minute all other times. While the calling plan includes a $5.95 monthly recurring charge, Excel submits that the recurring fee fulfills the intended objective of allowing the company to charge the lowest possible usage rate by recovering its basic costs of providing service through a flat-rated fee. Customers that make few long distance calls and, consequently, would not benefit from the 3 cents calling plan may presubscribe to another basic rate plan with no monthly fee or a lower monthly recurring fee. Excel's calling plans with no or minimal monthly recurring fees offer very competitive rates.

In addition to the availability of inexpensive rate plans, low-income customers can avoid the minimum usage charges and flat-rated fees imposed by IXCs by not presubscribing

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3 *See Telecommunications Industry Revenue: 1997*, *Table 5*, Jim Lande and Katie Rangos, Industry Analysis Division, Federal Communications Commission, Washington, DC, (Oct. 1998).

to a long distance carrier at all and relying upon dial-around calling options to complete interstate long distance calls. Dial-around carriers are now commonplace in the market and many widely advertise their rate plans and service options using both print and television media. Like traditional IXCs, dial-around carriers offer very low per-minute rates for services, but because they do not incur many of the billing and regulatory expenses attributable to presubscribed services, may not include flat-rated charges in their billing statements.

As demonstrated by sharply declining long distance rates, there is no need for additional pricing regulation. Consequently, Excel respectfully opposes any efforts to expand the universal service program to include long distance services. The Universal Service Fund was intended to cover essential basic telecommunication services (*i.e.*, local services), which does not include long distance. Likewise, Excel opposes any proposal to require additional billing inserts for long distance carriers. While Excel supports increased consumer awareness, Excel does not believe that the nominal benefits that may be derived from billing inserts would justify the costs that would be imposed upon carriers, and ultimately passed-through to consumers. Moreover, a function of the fully competitive marketplace is that carriers aggressively market their services and rates in an effort to win new customers and achieve "name-brand" status. As a result, customers already are receiving an enormous amount of information regarding the various service alternatives that exist in the market without the use of billing inserts.

Finally, to continue the downward pressure on long distance prices, Excel urges the Commission to reconsider how the PICC is assessed upon end users. Under the existing rules, the ILECs bill the PICC to the presubscribed IXCs which, in turn, must collect the PICC from end users. Excel submits that this recovery mechanism is flawed. By requiring IXCs to collect these charges, the Commission has essentially forced IXCs to raise their rates (at least in the eyes of the consumer) to cover a cost that is directly related to the ILECs' provisioning of service. In addition, the ILECs have all of the billing information needed to accurately pass-through the PICC and do not always provide the IXCs with this information or fail to provide it in a timely manner. Thus, using the IXCs to recover the PICC is inefficient. The ILECs have the data and billing systems in place to collect the PICC from subscribers and, as the ultimate beneficiaries, should be solely responsible its collection.

III. CONCLUSION

For the foregoing reasons, Excel supports the Commission's desire to prevent inequitable treatment of low-volume users of interstate service, but respectfully urges the Commission to rely upon market forces and not pricing regulations to ensure that these customers pay reasonable prices for services.

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CERTIFICATE OF SERVICE

I, Andrea D. Pruitt, hereby certify that copies of the foregoing Comments of Excel Communications, Inc. were served on September 22, 1999 by messenger on the following persons.

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